

Conversely, respondent and its insurance fund contend the appeal is premature. They argue that Judge Foerschler appointed Dr. Fevurly to provide him information relevant to claimant's requests for benefits. They also argue a question exists as to the relief claimant was seeking at the preliminary hearing. Therefore, they contend Judge

Foerschler reserved his rulings regarding claimant's requests for benefits until the doctor has completed the independent medical evaluation and has provided a medical report.

The issues before the Board on this appeal are:

1. Did the Judge rule on claimant's requests for benefits or did he take the claim under advisement until Dr. Fevurly had performed the independent medical examination?
2. If the Judge did not take the claim under advisement but, instead, ruled on claimant's requests for benefits, does the Board have jurisdiction at this juncture of the claim to review the preliminary hearing order?
3. If so, is claimant entitled to the benefits requested?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. Claimant's appeal is premature. Therefore, this appeal should be dismissed leaving the May 11, 2001 Order in full force and effect.
2. On October 24, 2000, claimant notified respondent through Osawatomie State Hospital that he intended to seek a preliminary hearing if the hospital failed to address his requests for medical benefits, benefits for lost wages, and an independent medical examination.
3. Respondent and its insurance fund did not satisfy claimant's requests and this claim then went to preliminary hearing on March 8, 2001, before Judge Foerschler. After listening to statements from both claimant and counsel for respondent and its insurance fund, the Judge stated that he was taking the matter under advisement. The Judge stated:

I'm going to take this matter under advisement and issue an order for Dr. Carabetta to furnish me with copies of what records he has developed on this thing and then I'll probably order some kind of neutral examination. I've got to find somebody that's not so much trouble to get to. You say you live in Paola?¹
4. On May 11, 2001, the Judge issued an Order appointing Dr. Fevurly to examine and evaluate claimant. The Order directed the doctor to provide a written medical report to the Judge. The Order also directed claimant to submit his unpaid, authorized medical bills to the Judge for consideration.

¹ Preliminary Hearing, March 8, 2001; p. 15.

5. The Board concludes Judge Foerschler took claimant's requests for benefits under advisement to allow time for receipt of Dr. Fevurly's report and for receipt of claimant's unpaid medical bills. Although claimant did not make it clear at the preliminary hearing that he was also requesting temporary total disability benefits for his lost time from work, the Judge can address that request for benefits when he addresses the other requests.

6. Because of the above conclusion, the remaining issues are rendered moot and need not be addressed.

WHEREFORE, the Board dismisses claimant's appeal, leaving the May 11, 2001 Order entered by Judge Foerschler in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

c: Daniel L. Noblet, 905 Main St., Osawatomie, KS 66064
Robert E. North, Topeka, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director